

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILADELPHIA INSURANCE
COMPANY,

Plaintiff,

v.

VISION ONE LLC,

Defendant.

No. C06-5010 RBL

ORDER GRANTING
DEFENDANT'S MOTION
TO STAY

This matter is before the Court on Defendant Vision One LLC's Motion to Stay or Dismiss [Dkt. #12]. Vision One argues that the Court should grant its motion for three reasons: (1) to avoid having a federal court needlessly determine issues of state law; (2) to discourage forum shopping; and (3) to avoid duplicative litigation. For the reasons below, the Court GRANTS Vision One's motion and stays this action.

The underlying accident that gave rise to this case occurred at a construction site on October 1, 2005, when a concrete slab collapsed and injured several workers. The workers brought claims against Vision One, a Washington company. Vision One contacted its insurance company, Philadelphia Insurance, a Pennsylvania corporation, to report the claims and seek coverage under its policy. On October 11, 2005, Philadelphia notified Vision One that it was investigating the claim. On November 21, 2005, while

1 Philadelphia was investigating the claim, an engineering firm, BT&Associates, prepared a report
2 summarizing the causes of the collapse and attributing it to the “shoring design” and “[s]everal problems
3 with the shoring installation.” Defendant’s Motion to Stay at 3. On January 3, 2006, Philadelphia notified
4 Vision One that it was denying coverage because the policy excludes coverage for accidents that are the
5 result of “deficient design or specifications,” or “faulty materials or workmanship.”
6

7 On January 10, 2006, Philadelphia filed this declaratory judgment action, seeking a declaration that
8 under the policy, it has no obligation to defend or indemnify Vision One. On May 7, 2006, Vision One
9 answered Philadelphia’s complaint and counterclaimed, seeking a declaration that Philadelphia’s policy
10 does provide coverage. Vision One also claims that Philadelphia handled Vision One’s insurance claim in
11 bad faith, for which Vision One seeks damages.
12

13 On March 9, 2006, Vision One filed suit in Pierce County Superior Court. It named Philadelphia
14 and the concrete subcontractor at the construction site, D&D, as defendants. D&D is a Washington
15 corporation. Vision One now seeks a stay or dismissal of this proceeding pending resolution of the state
16 court proceeding.
17

18 DISCUSSION

19 This federal court action features two kinds of claims: each party’s claim for declaratory judgment
20 and Vision One’s counterclaim for damages. All claims arise under state law. This Court has jurisdiction
21 over all claims by virtue of diversity of citizenship. 28 U.S.C. §1332. The issue the Court is asked to
22 resolve—whether to stay proceedings in this Court in deference to proceedings in Pierce County—is
23 governed by two different analyses, each corresponding to one of the two kinds of claims.
24

25 A. Both Parties’ Claims for Declaratory Judgment

26 Federal courts have a “virtually unflagging obligation” to exercise the jurisdiction given to them.
27 *Colorado River Water Conser. Dist. v. U.S.*, 424 U.S. 800, 871 (1976). However, under the Declaratory
28 Judgment Act, even when subject matter jurisdiction is otherwise proper, the exercise of jurisdiction over a

1 declaratory judgment action is discretionary, not mandatory. *See Snodgrass v. Provident Life and*
2 *Accident Ins. Co.*, 147 F.3d 1163, 1166-67 (9th Cir. 1998). One instance in which federal courts
3 ordinarily should decline to exercise jurisdiction over a declaratory action is when parallel state court
4 proceedings are pending. *Chamberlain v. Allstate Ins. Co.*, 931 F.2d 1361, 1366 (9th Cir. 1991). The
5 district court must balance the fact that state court proceedings are pending with concerns of judicial
6 administration, comity, and fairness to the litigants. *Id.* at 1367.

8 Here, Vision One argues that this Court should stay proceedings in federal court in deference to
9 state court proceedings for three reasons: (1) to avoid having a federal court needlessly determine issues of
10 state law; (2) to discourage forum shopping; and (3) to avoid duplicative litigation. *See Continental*
11 *Casualty Co. v. Robsac Industries*, 947 F.2d 1367, 1371 (9th Cir. 1991) (citing *Chamberlain*, 931 F.2d at
12 1366).

14 First, Vision One argues that state courts, not federal courts, should determine issues of insurance
15 law wherever possible. It cites the McGarran-Ferguson Act, 15 U.S.C. §§1011-12, to show that insurance
16 law is an area of law that Congress has expressly left to states. Insurance law is the province of the state.
17 Vision One's argument is supported by ample authority discouraging federal courts from needlessly
18 determining issues of state law. *See Chamberlain*, 931 F.2d at 1366.

20 Second, Vision One argues that the Court can prevent forum shopping in this matter by deferring to
21 the state court. However, depending on one's perspective, Vision One, not Philadelphia, could be viewed
22 to have shopped for the forum of Vision One's preference when it filed suit in state court two months after
23 Philadelphia initiated this suit in federal court. Under these circumstances, when it is possible that both
24 parties are doing what they can to land in the forum of their choice, an argument against forum shopping is
25 not persuasive.

27 Vision One's third argument is that this Court should stay proceedings to avoid duplicative
28 litigation. Vision One correctly argues that resolution of the coverage questions raised in the federal court

1 proceedings and the liability questions raised in the state court proceedings will depend on the same factual
2 question: whether the underlying accident was the result of “deficient design or specifications,” “faulty
3 materials or workmanship,” or some other cause. One can neatly distinguish the state court liability
4 question from the federal court coverage question, but the factual determination on which each court will
5 rely to resolve these questions are indistinguishable. For this reason, allowing both the federal and state
6 proceedings to go forward may result in inconsistent results.

7
8 Therefore, in order to avoid duplicative proceedings and inconsistent results with regard to the
9 operative facts, and in deference to Congress’s mandate that insurance law is to be governed by the states,
10 this Court declines to exercise jurisdiction over the declaratory judgement claims before it.
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12 **B. Defendant Vision One’s Counterclaim for Damages**

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14 The other kind of claim before the Court is Vision One’s counterclaim for damages. The Ninth
15 Circuit has held that when there is a claim for declaratory relief coupled with another claim, such as a
16 counterclaim for bad faith, the district court generally should entertain the other claim. *Chamberlain*, 931
17 F.2d at 1367. The Ninth Circuit has also referred to such other claims as “independent claims,” or claims
18 that exist independent of any request for purely declaratory relief. *Snodgrass*, 147 F.3d at 1167. When an
19 action features an independent claim, that claim is not subject to the discretionary jurisdictional rule under
20 the Declaratory Judgment Act. *Id.* In other words, the district court has less discretion to refrain from
21 exercising jurisdiction over an independent claim.
22

23 For independent claims, the standard for determining whether to stay the case is the presence of
24 “exceptional circumstances,” a standard that has been well articulated in *Colorado River* and its progeny.
25 See *Pence v. Lightning Rod Mutual Ins. Co.*, 203 F. Supp. 1025, 1029-30 (S.D. Ind. 2002) (citing
26 *Colorado River*, 424 U.S. at 817; *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460
27 U.S. 1, 19 (1983); *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 570 (1983), and *Will v. Calvert*
28

1 *Fire Ins. Co.*, 437 U.S. 655, 666 (1978)).¹ More specifically, the Ninth Circuit has held that when the
 2 court is faced with a claim for declaratory judgement, coupled with an independent basis for jurisdiction,
 3 the Declaratory Judgment Act should be interpreted to avoid piecemeal litigation. *Snodgrass*, 147 F.3d at
 4 1167.
 5

6 Several considerations persuade the Court to refrain from exercising jurisdiction over Vision One's
 7 independent bad faith claim in this case. First, as discussed above, state insurance law provides the rule of
 8 decision. Second, refraining from exercising jurisdiction will accomplish two goals: it will avoid piecemeal
 9 litigation and conserve judicial resources. The Court cannot accomplish either goal by exercising
 10 jurisdiction here. On one hand, if this Court decides to exercise jurisdiction on the damages claim alone,
 11 piecemeal litigation will result because this Court's decision will depend on whether the state court
 12 concludes that coverage exists. On the other hand, if this Court decides to exercise jurisdiction over all
 13 claims, the Court will analyze the same or similar facts as the state court will analyze. The result will be
 14 duplicative at best, and inconsistent at worst. Third, removal is not available to prevent piecemeal
 15 litigation. In the state action, Defendants Philadelphia and D&D are non-diverse from the Plaintiff, Vision
 16 One. Finally, there is no showing that either party will be inconvenienced or prejudiced by pursuing all
 17 claims in state court.
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 19

20 Based on these exceptional circumstances, and in the interest of comity and judicial economy, the
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22
 23 ¹The Seventh Circuit lists 10 factors that help determine whether exceptional circumstances exist:

- 24 1) the difficulties posed when a state and federal court assume jurisdiction over the same *res*;
- 25 2) the relative inconvenience of the federal forum;
- 26 3) the need to avoid piecemeal litigation;
- 27 4) the order in which the state and federal proceedings were filed;
- 28 5) whether state or federal law provides the rule of decision;
- 6) whether the state action protects the federal plaintiff's rights;
- 7) the relative progress of the state and federal proceedings;
- 8) the presence or absence of concurrent jurisdiction;
- 9) the availability of removal;
- 10) the vexatious or contrived nature of the federal claim.

Pence, 203 F. Supp. at 1030 (citing *Sverdrup Corp. v. Edwardsville Community Unit School Dist. No. 7*, 125 F.3d 546, 549-550 (7th Cir. 1997)).

1 Court will abstain from entertaining the claims before it.

2 **CONCLUSION**

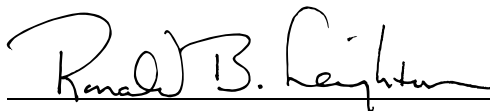
3 The Court GRANTS Defendant's Motion to Stay [Dkt. #12].

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5 Pursuant to this Order, it appears that this matter will remain in an inactive status for a substantial
6 period of time. The Court therefore directs the clerk to enter a STATISTICAL TERMINATION of this
7 action. Counsel should note that this termination is intended solely to remove this matter from the Court's
8 docket of active pending cases in order to alleviate congestion of the Court's docket. At such time as the
9 parties deem this litigation to be in a posture to proceed before this Court, they shall file a motion to
10 reopen and the matter will proceed. The motion to reopen shall be filed in the above-referenced cause
11 number. No new case need be filed, nor will additional filing fees be required. For purposes of statutes of
12 limitations, the Court deems the filing date of this litigation to be and to remain the original filing date of
13 the above-entitled case.
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15 All pending motions, deadlines, and hearings, if any, shall be stricken as moot.

16 IT IS SO ORDERED.

17 DATED this 19th day of April, 2006.

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22 RONALD B. LEIGHTON
23 UNITED STATES DISTRICT JUDGE
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